IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 631 of 2004

State of Maharashtra .. Applicant

versus

Santosh Pandurang Konde & Anr. .. Respondents

...

Mr.D.P. Adsule, APP for the State.

Mr.R.S. Kate for the respondents.

CORAM : V.M. KANADE, J

DATED : 3rd December 2004.

ORAL ORDER:-

1. Heard the learned APP appearing on behalf of the State and the learned counsel for the respondent.

2. The State has filed this appeal against the judgement and order passed by Addl. Sessions Judge, Pune dated 31st January 2004 in Criminal Appeal no.

187 of 2002. By the said judgement and order, the lower appellate Court convicted the respondents under the provisions of section 323 332, 333 and 353 r/w sec.34 of the IPC. However, the lower appellate Court granted the benefit of the Probation of Offenders Act and reduced the sentence till the rising of the Court and imposed a fine of Rs.10,000/- each on the respondents. The State has preferred this appeal seeking enhancement of sentence.

3. Under the provisions of Probation of Offenders Act, the trial Court is empowered to call for the report from the Officer regarding the accused and in cases where the conviction is not for imprisonment of life or death can reduce the sentence by giving benefit of section 4 of the Probation of Offenders Act. Under section 5 of the said Act, a discretion is vested with the trial Court to impose costs and compensation which can be paid to the complainant or aggrieved persons. In the instant case, both the accused are young boys coming from a good family and the offence which was committed by them was their first offence. The respondent accused had a good record as wrestlers and had earned various awards at the State and National level. The trial Court has

also observed that the accused were in jail for about 11 days.

4. In the facts and circumstances of the case, I do not see any reason to interfere with the said order passed by the lower appellate Court. Leave is therefore refused. Appeal is dismissed.

V.M.KANADE, J